

INTERNATIONAL STANDARDS AND THE 2002 PRESIDENTIAL ELECTION IN ZIMBABWE

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I. GENERAL INTRODUCTION

A. *Introduction*

Zimbabwe held a crucial Presidential Election from the 9th to the March 11, 2002. The election was momentous because it was preceded by cataclysmic events in the country's post-colonial scene. The election attracted such singular international attention that the question of sovereignty that had never been raised *vis-à-vis* the conduct of elections became a topical issue in Zimbabwe and other countries. Furthermore, human rights fears that had characterized the 2000 parliamentary elections paled into insignificance by comparison.¹

The importance of these elections provides more evidence when we consider that more than a year later, the political crisis in the country was far from over. This article is an attempt to critique the presidential election in the light of international human rights standards guiding electoral practices. This article also measures electoral practices against democratic norms prevailing in the global environment. Consequently, it is envisaged that this will help scholars and political scientists who are studying electoral institutions to contextualize the event and appraise it against the democratic ethic that Africa is aspiring towards. The election, as a model, can either be accepted or rejected in contributing to the improvement of domestic or regional systems.² The limitation of this paper is that during the election, the writer was only an unaccredited observer. As such, it was not possible to gain access into polling stations or to formally interview the main actors in the election. Thus, much reliance was placed on information from the Zimbabwe Human Rights (N.G.O.) Forum (Z.H.R.F. or the Forum), newspaper reports, the Internet and reports from international groups, aside from the traditional forms of information gathering.³

B. *The importance of elections*

Granted that the reasons that the international community was drawn to the Zimbabwean election may not have been entirely selfless; this concern is based

1. Allegations from different corners were made regarding the state of human rights in the pre-and post-2000 Parliamentary election period. See e.g., *Zimbabwe: Terror Tactics in the Run-up to the Parliamentary Elections*, AMNESTY INTERNATIONAL, June 2000; *Rule of Law*, THE LAW SOCIETY OF ZIMBABWE MAGAZINE, 2000, at 5; Law Society of Zimbabwe; B. Raftopoulos, *Politics in Zimbabwe-2001: Confronting the Crisis*, Address at the Crisis in Zimbabwe Conference, (Aug. 4, 2001) (transcript is on file with the author).

2. Individual aspects of the election may be dealt with likewise.

3. HUMAN RIGHTS AND ZIMBABWE'S PRESIDENTIAL ELECTION, *The Zimbabwe Human Rights Forum* (March 2002), at <http://www.hrforumzim.com> (last visited Oct. 11, 2003) [hereinafter THE FORUM]. The Forum is comprised of twelve non-governmental organizations (NGOs) working in the field of human rights.

on the fact that democratic practices are not only important but must be monitored.⁴ Thus, in this age of globalization, no country is an island. If Country X does not measure up to democratic behavior, there may be a ripple effect that impact not only the region, but on the whole world.

It is now axiomatic that one of the fundamental prerequisites for any democratic transition is free and fair elections.⁵ Indeed, some scholars go as far as to say that the notion of democracy, involving the two aspects of "free and fair elections" and "good governance" has become a global norm.⁶ It is admitted that the notion of democracy and all its corollaries like the rule of law and good governance has not yet found universal acceptance, let alone interpretation.⁷ Nonetheless, it cannot be gainsaid that the notion of democracy, involving the two aspects of "free and fair elections" and good governance has become established in the course of the 1990's.⁸

Among other things, governance in the modern sense recognizes that the will of the people should be central to how they must be ruled.⁹ Like elsewhere, the outcome of the 2002 election in Zimbabwe was expected to reflect the will of the majority of the people since the citizens have a right to determine their own existence and to choose who should preside over their day-to-day life in their pursuit of fulfillment and happiness.¹⁰ This will of the people is reflected in the doctrine of free and fair elections.

4. The ruling party and its friends argued that American and European interests, especially that of the British, was actuated not because of any concern for democracy but because of a 'satanic conspiracy' to return white supremacy and prevent the land redistribution exercise in which prime land belonging to white commercial farmers was being acquired reportedly for redistribution to landless blacks. *See generally*, 28 PARL. DEB. (The Parliament of Zimbabwe) (2002) 4:4128-9; 28 PARL. DEB. (The Parliament of Zimbabwe) (2002) 46:4136.

5. Larry Diamond, *Globalisation of Democracy: Trends, Types, Causes and Prospects* Centre for Democratic Studies 17 (quoting R. DAHL, *ECONOMIC GROWTH AND POLITICAL DEMOCRACY: LINKAGES AND POLITICAL IMPLICATIONS*).

6. INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE, 1996 REPORT OF THE DEMOCRACY FORUM 2 (1996) [hereinafter I.D.E.A.].

7. J.A. WISEMAN, *THE NEW STRUGGLE FOR DEMOCRACY IN AFRICA* 7-8 (Ashgate, Aldershot 1996).

8. I.D.E.A., *supra* note 6.

9. Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections, G.A. Res. 137, UN GAOR, 46th Sess., U.N. Doc. A/Res/46/137 (1991).

10. "The will of the people shall be the basis of the authority of government." Universal Declaration of Human Rights, G.A. Res. 217(A), U.N. GAOR, 3d Sess., at art. XXI(3), U.N. Doc. A/Res/217(A)(III) (1948) [hereinafter U.D.H.R.].

1. Free and fair elections

It is unlikely to be seriously contested that free and fair elections are a human right.¹¹ Indeed, the elements of freedom and fairness in elections pervade all international and regional legal instruments.¹² Elections should also be free and fair so that the rights and interests of the governed are protected.¹³

The right of individuals to determine their own fate will remain a sham if they are not granted the necessary environment in which to exercise that right freely and without unnecessary impediments. Thus, state parties, in this case Zimbabwe, are bound to hold genuine and periodic elections "guaranteeing the free expression of the will of the electors."¹⁴ State parties are also bound to ensure that representatives are "freely-chosen."¹⁵ Apart from protecting the individual, these requirements are also designed to give legitimacy to the political system and to enhance democracy. In this respect, they are a motivation to contribute to the development process.¹⁶

It should also be observed that the idea of freeness protects the voters not only at the time of voting, but also stretches back to the pre-election period.¹⁷ As a consequence, the principle of free elections is closely linked to the fundamental freedoms of thought, conscience, religion, expression, and association as well as assembly; and freedom from discrimination.¹⁸ These essential freedoms are also protected in the African Charter.¹⁹

Lastly in this respect, it is also observed that the idea of freedom in the electoral process contemplates a political environment that is not manipulative. It envisages a situation where there is greater freedom of the media to operate

11. G. TOTEMEYER & D. KADIMA, *ELECTORAL INSTITUTE OF SOUTHERN AFRICA, SADC OBSERVER HANDBOOK 3* (2000).

12. See generally, *United Nations Framework for Strengthening the Rule of Law*, available at www.arts.mcgill.ca/programmes/polisc/unsco-ruleoflaw.html (last visited July 15, 2002); see also, U.D.H.R., *supra* note 10, at art. 21; International Covenant on Civil and Political Rights, G.A. Res. 2200A, U.N. G.A.O.R., 21st Sess., (1996) [hereinafter I.C.C.P.R.].

13. *Context and objectives of UN electoral assistance*, at www.un.org/Depts/dpa/ead/websites (last visited Aug. 13, 2002).

14. I.C.C.P.R., *supra* note 12, at art. 25(b).

15. African [Banjul] Charter on Human and People's Rights, July 20, 1979, art. 13, 21 I.L.M. 58 [hereinafter African Charter]; see also UDHR, *supra* note 10, at art. 21(1); I.C.C.P.R., *supra* note 12, at art. 25(a).

16. Part One of the African Charter for Popular Participation in Development and Transformation (the African Charter for Development).

17. See generally, G.S. GOODWIN GILL, *FREE AND FAIR ELECTIONS: INTERNATIONAL LAW AND PRACTICE* (Inter-Parliamentary Union 1994).

18. M. NOWAK, *CCPR COMMENTARY 449* (N.P. Engel Publishers 1993)

19. African Charter, *supra* note 15, at art. 2, 8-11.

without undue influence or hindrance. G. Feltoe sets out some of the considerations that could negate the freeness and fairness of an election as where:

- a) Campaigning by a political party is prevented or seriously obstructed;
- b) Voters are intimidated or bribed;
- c) The electoral laws give an unfair advantage to one of the political parties contesting the election;²⁰
- d) There is rigging of the elections.²¹

It follows from the above therefore that the notion of freedom in elections is a prerequisite for democracy. It basically denotes an environment wherein voters have the freedom to participate in elections the way they want without fear of adverse effects on their and/or their families' safety, welfare, or general dignity and without coercion and restrictions.²²

It may also be added that fairness means that the rules of the game are clearly spelled out for all contesting parties to know what is at stake. The elections must also be held in respect to the principles of universal and equal suffrage, paying attention to the right to equality.²³ These requirements are widely captured in international and regional legal instruments.

2. The international and regional instruments governing elections

Many conventions, declarations and protocols provide for free, fair and genuine elections. The International Covenant on Civil and Political Rights (I.C.C.P.R.) makes provision for open elections, as does the Convention on the Elimination of All Forms of Racial Discrimination (C.E.R.D.).²⁴ Zimbabwe is

20. Transparency establishing the legal ground rules in an inclusive and open manner is necessary. THE ORGANISATION FOR SECURITY AND CO-OPERATION IN EUROPE, THE O.D.I.H.R. ELECTION OBSERVATION HANDBOOK 7 (1999).

21. G. Feltoe, *An unfair contest: The Presidential Elections in Zimbabwe*, in 6 ZIMBABWE HUMAN RIGHTS BULLETIN 81 (2002). (Electoral fraud vitiates or even perverts the will of the people.)

22. This is the requirement for the secrecy of the ballot.

23. Any restriction to the right to vote should be reasonable; not discriminatory. See G.A. Res. 137, U.N. G.A.O.R., 46th Sess., U.N. Doc A/RES/46/137 (1991); I.C.C.P.R., *supra* note 12, at art. 25(b). Restriction on the grounds of residency was upheld by the European Commission, see App. Mo. 7566/76, 9 Eur. Comm'n H.P. Dec. & Rep. 121 (1976). See also M. Nowak, *supra* note 18, at 449.

24. G.A. Res. 2106, U.N. G.A.O.R., 20th Sess., arts. 5, 25 (1965); see also Convention on the Political Rights of Women, Dec. 20, 1952, 193 U.N.T.S. 135.

a party to these two conventions.²⁵ It also ratified the African Charter on Human and Peoples' Rights.²⁶

For the purposes of this inquiry, it suffices to say that all the instruments cited above basically make provisions for the conduct of regular (or periodic), genuine (or free and fair) elections, mostly by secret ballot. However, it is interesting to note that unlike the European and American conventions, the African Charter is silent on the issue of secrecy of the ballot. It is also remarkable that of the regional instruments, it is only the American Convention that makes a direct reference to the question of suffrage.²⁷ The Charter may also be compared to the American Convention, which adds a right to be elected.²⁸

Evaluated against international and regional instruments the African charter therefore "stands out as meager and without substantial legal content" with regard to the right to vote. Moreover, the right is to be exercised "in accordance with the provisions of national laws." It may be noted however that there is no clear check or limitation on the import or operation of national legislation, leaving wide discretion to the individual state.²⁹ This leads us to examine the extent to which sovereignty, as contested by the government of Zimbabwe, can preclude international interest in domestic elections.

3. Sovereignty and elections

The state party to the international instruments setting out the rules and standards for the conduct of elections has some modicum of latitude to conduct elections within the parameters of its own laws.³⁰ The United Nations recognized sovereignty in its Resolution on "respect for the principles of national sovereignty and non-interference in the internal affairs of states in their electoral processes."³¹

25. CHRISTOF HEYNS, *HUMAN RIGHTS LAW IN AFRICA* 1 (Kluwer Law International 1996 Series, 1996). In the regional sphere, Article 13 of the African Charter on Human and Peoples' Rights, Article 20 of the American Declaration of the Rights and Duties of Man, Article 23 of the American Convention on Human Rights, and Article 3 of the European Convention on Human Rights Protocol 1 make provision for open elections.

26. *Id.* at 5.

27. American Convention on Human and Peoples' Rights, Nov. 22, 1969, art. XXIII(1)(b), 1144 U.N.T.S. 123.

28. *Id.*

29. LONE LINDHOLT, *QUESTIONING THE UNIVERSALITY OF HUMAN RIGHTS: THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS IN BOTSWANA, MALAWI AND MOZAMBIQUE* 156 (DARTMOUTH PUBLISHING CO.) (1997).

30. The principle of sovereignty has been codified in, among others, Article Two of the United Nations Charter.

31. U.N.G.A. Res. 46/130 of 17 December 1991; *see also* U.N.G.A. Res. 47/130 of 18 December 1992 and U.N.G.A. Res. 48/124 of 20 December 1993.

Although they are held within the limitations of domestic law and practice, elections must be held in an environment that caters to the exercise of fundamental freedoms in accordance with international law. It seems incontrovertible that on the global scene, the principle of sovereignty is and should indeed keep on giving way to the principles of accountability, the observance of international norms, and human rights.³² Sovereignty should never become a sanctuary for dictatorship and human rights violations.

II. ZIMBABWE: A BRIEF POLITICAL BACKGROUND

The struggle for democracy and human dignity has its roots in the colonial period of the country. The British formally colonized Zimbabwe in 1890. In 1893, the Anglo-Ndebele War erupted against the local Ndebele ethnic group in the Matebeleland region. This war was actuated by the dispossession of blacks of their land and cattle.

Shortly thereafter the Shona groups from Mashonaland joined the war and by 1896, the conflagration had become so widespread that it was called The First *Chimurenga* or "war of liberation." After the arrest and execution of the *Chimurenga* leaders, further dispossession and oppression followed, the upshot of which was that dissent spread commensurately.³³

As a result, the trade union movement gave birth to several opposition political parties. The Zimbabwe African National Union (Z.A.P.U.) was formed in 1961 under the leadership of Joshua Nkomo and the Zimbabwe African National Union (Z.A.N.U.) was formed in 1963 under the headship of Ndabaningi Sithole³⁴ as discontent with a political system that was premised on the notion of white supremacy grew. Smith proclaimed a Unilateral Declaration of Independence (U.D.I.) on November 11, 1965.³⁵ This move was designed to perpetuate minority rule and is largely seen as the precipitator of the bitter liberation struggle that was to follow: the Second *Chimurenga*.³⁶ The guerrilla war forced Smith to the negotiating table, culminating in the country's first

32. Admittedly, there is a lack of consensus about in which issues the international community has the right to intervene. See generally, M. HEINBERG, *SUBDUING SOVEREIGNTY: SOVEREIGNTY AND THE RIGHT TO INTERVENE* 136 (Pinter Publishers 1994). In his book *Keeping a Fractured Peace*, J.J. Holst observes "[s]overeignty may in fact be waning more rapidly than widely presumed...."

33. For information about Zimbabwe, visit the Zimbabwe government website at <http://www.gta.gov.zw> (last visited Oct. 11, 2003).

34. Subsequently led by President Mugabe as the First Secretary of the party.

35. The system was segregationist and the franchise was only extended incrementally until equal and universal suffrage was obtained at independence in 1980.

36. GABRIEL SHUMBA ET AL., *Report on the Presidential Election in Zimbabwe* 4 (2002). The paper was researched under the guidance of the Centre for Human Rights, University of Pretoria, and is on file with the Centre.

majority vote in 1980. The elections were won by Z.A.N.U. (P.F.), uninterruptedly the ruling party, and ushered in black majority rule.³⁷

Although the country has never been a *de jure* one-party state, the ruling party has completely dominated Zimbabwean politics since the Unity Accord with Z.A.P.U. in 1987. However, it seems to have been shocked out of complacency when the Movement for Democratic Change under the leadership of Morgan Tsvangirai almost won over half the contested seats in the June 2000 Parliamentary Elections. Compounded by the fact that the government had suffered defeat when Zimbabweans rejected a government-sponsored draft Constitution at a referendum earlier in the year, the tone of government official speeches became ominous if not utterly menacing as the Presidential election drew near.³⁸

The legal regime for the elections

In evaluating the election, recourse should be had to the domestic legal regime, in particular, the electoral law and the Constitution. The Constitution provides for fundamental human rights.³⁹ These include political rights like freedom of conscience, expression, assembly and association, movement and protection from discrimination.⁴⁰ Other freedoms include the right to life, the right to protection from inhumane treatment and the right to protection from arbitrary search or entry.⁴¹

The Constitution also provides for the election of the president in accordance with the electoral law.⁴² To be elected to presidency, one must be a citizen by birth or descent and should have attained forty years of age and be ordinarily resident in Zimbabwe.⁴³ The tenure of the office of the president is limited to six years. It is however notable that the constitution is silent on the duration of the term of office of the incumbent president in the event of his/her being re-elected.

Section Sixty-one of the Constitution provides for the establishment of an Electoral Supervisory Commission (E.S.C.). It may be observed that although the Constitution provides for the registration of voters,⁴⁴ it does not guarantee

37. *Id.* Z.A.N.U. (P.F.) won 116 out of the 120 contested seats.

38. *See generally*, The FORUM, *supra* note 3. (These speeches are extensively captured within.)

39. ZIMB. CONST., ch. III.

40. *Id.* §§ 19-23.

41. *Id.* §§ 12, 15, 17.

42. *Id.* at ch. V, § 2.

43. *Id.*

44. ZIMB. CONST., ch. VI, § 8.

that those entitled to be registered will actually be registered as voters. It also does not grant the right not to be prevented from casting the ballot.

The Electoral Act provides for regulations and procedures governing parliamentary and presidential elections.⁴⁵ It makes provisions for the appointment of an Electoral Directorate (the E.D.), the functions of which include “giving instructions and making recommendations” for “ensuring that elections are conducted efficiently, properly, freely and fairly.”⁴⁶ It also regulates the procedure and conditions of service of the E.S.C. and Registrar-General of Elections (the R-G) as well as the registration of voters. The Act also provides for the functions of the R-G who is subject to the direction of the E.D.⁴⁷

1. The Election Directorate (E.D.)

The E.D. consists of a chairman appointed by the President, the Registrar-General and no fewer than two, or more than ten other members. The Minister of Justice, Legal and Parliamentary Affairs appoints the ten others. Any other person assigned for the administration of the Act in terms of Section Three may also assume the Minister’s responsibility.⁴⁸ It would seem that the composition of the E.D. does not augur well for guaranteeing free and fair elections. Ultimately, the President appoints members in one way or another. In practice, it has often been shown that the E.D.’s partiality in handling contentious elections is suspect.⁴⁹

The E.D. was chaired, *ex officio*, by Mariyawanda Nzuwa (appointed by President Robert Mugabe) and the Registrar-General (Tobaiwa Mudede). Who exactly comprised the E.D.’s other members in March 2002 was not clear. However, the Police Commissioner sat together with the E.D. Chair and the R-G at the table from which the results were announced.⁵⁰

2. The Electoral Supervisory Commission (E.S.C.)

An Electoral Supervisory Commission (E.S.C.) is established by Section Sixty-One of the Constitution. The President, in consultation with the Judicial Service Commission, appoints a chairperson and two other members.⁵¹ Two

45. Electoral Act, Zimb., at <http://www.eisa.org.za/PDF/Zimbabwe/ElectoralAct.pdf>. (last visited Oct. 11, 2003).

46. *Id.* § 4.

47. *Id.* § 15(2)-(3).

48. *Id.* § 4.

49. *See generally*, THE FORUM, *supra* note 3, Angela P. Cheater (2001).

50. *Id.*

51. ZIMB. CONST., ch. LXI(1).

additional members are "appointed by the President after consultation with the Speaker."⁵²

It should be noted that although the President must consult, he or she is not required to adopt recommendations given to him/her. The President also decides the tenure of office of the Commissioners.⁵³ Furthermore, members hold office "on such conditions as the President may fix" and the President may remove them from such office.⁵⁴ Thus, the impartiality of the E.S.C.—appointed by the President—remains suspect. Practice has also generated suspicions that the E.S.C. panders to political considerations although the Constitution provides for its independence.⁵⁵

Together with the R-G, the E.S.C. is responsible for conducting presidential and parliamentary elections. Still, it is interesting that neither the Electoral Act nor the Constitution specifically grants the E.S.C. a mandate to conduct elections for presidency.

The E.S.C. appeared to be inadequately geared to discharge its constitutional mandate as only four of the five required E.S.C. members were appointed.⁵⁶ The President appointed retired army colonel, ex-combatant, and lawyer Sobusa Gula-Ndebele as the Chair.⁵⁷ In turn, the Chair of the E.S.C. appointed as Director of Elections brigadier Douglas Nyikayaramba.⁵⁸ Seventy-two Zimbabwe National Army officers were reportedly seconded to the E.S.C. One thousand eighty election supervisors and 22,000 election monitors were mostly recruited from the ministries of defense, home affairs and education.⁵⁹

It would appear that the selection of electoral officers was not transparent and inclusive. A balance could have been attained by also including people from other sectors of the national spectrum to give the impression of independence. In Lesotho, for example, officers of the Independent Electoral Commis-

52. *Id.*

53. Electoral Act, *supra* note 45, at art. § 7.

54. *Id.* §§ 7, 10.

55. ZIMB. CONST., ch. LXI(6). In 2002, the United Parties resolved to boycott the election until amendments were made to the Electoral Act and the Registrar-General was precluded from conducting voter registration. See also Angela Cheater, *A Baseline Report in Zimbabwe Lawyers for Human Rights*, ZIMBABWE HUMAN RIGHTS BULLETIN, Jan.-June 2000, at 66.

56. See generally THE FORUM, *supra* note 3.

57. He took over after Peter Hatendi resigned in protest over funding and other inadequacies.

58. See THE ZIMBABWE INDEPENDENT, Feb. 14, 2002, at <http://www.standard.co.zw> (last visited Oct. 11, 2003).

59. See THE FINANCIAL GAZETTE, Jan. 31, 2002, at <http://www.mweb.co.zw> (last visited Oct. 11, 2003).

sion (I.E.C.) came from diverse backgrounds.⁶⁰ Moreover, the law was amended willy-nilly to favor the ruling party, as will be seen below.

3. Changes to the electoral law

The President used his wide powers three times⁶¹ under the Electoral Act to promulgate laws that were detrimental to the opposition.⁶² One such law was the General Laws Amendment Act (G.L.A.A.).⁶³ The G.L.A.A. made extensive amendments to the Electoral Act. It was described by the opposition as “undemocratic and contrary to the S.A.D.C. Parliamentary Forum Norms and Standards for Elections in the S.A.D.C. Region.”⁶⁴ The Minister of Justice, Legal and Parliamentary Affairs described the amendments as designed “to kick out from our politics the influence of foreign money and foreign interests” and to prevent private organizations from conducting voter education.⁶⁵

Also contentious was a provision in the G.L.A.A., which empowered the Registrar-General to change voters’ registration particulars without informing them.⁶⁶ It was feared that it facilitated rigging of the voter roll by moving voters between constituencies without their knowledge or even throwing them off the roll altogether. After the Supreme Court nullified the G.L.A.A.,⁶⁷ an Electoral Amendment bill was introduced carrying identical provisions.⁶⁸

4. Evaluation

It may be observed that the electoral institutions for the election were not independent, at least in principle. International standards for transparency, freeness and fairness of the electoral process can normally be enforced when, among other things, the selection of electoral officers and the setting up of institutions is seen as unbiased. Charges to the electoral law that fly in the face of court judgments may only have one purpose: to favor the ruling party at the

60. LESOTHO COMMONWEALTH OBSERVER GROUP REPORT, General Election May 25, 2002, at http://www.thecommonwealth.org/dynamic/press_office/display.asp?id=480&type=press&cat=57 (last visited Oct. 11, 2003) [hereinafter Lesotho Report]. Lesotho held its General election on the 25th of May 2002.

61. See Statutory Instruments, in, *Zimbabwe Presidential Elections*, REPORT OF THE COMMONWEALTH OBSERVER GROUP, Mar. 9-11, 2002 [hereinafter COMMONWEALTH].

62. See Electoral Act, *supra* note 45, § 158. This section gives the President powers to make statutory instruments that s/he “considers necessary or desirable to ensure that any election is properly and efficiently conducted and to deal with any matter or situation. . . .”

63. General Laws Amendment Act § 2 (2002) [hereinafter G.L.A.A.].

64. 28 PARL. DEB. (The Parliament of Zimbabwe) (2002) 35:3135.

65. See generally, THE FORUM, *supra* note 3.

66. See ZIMB. CONST., ch. XXXIV(1).

67. See COMMONWEALTH, *supra* note 61, at 23.

68. G.L.A.A., *supra* note 63, at 4.

detriment of the opposition.⁶⁹ However, this on its own should not be taken in isolation to arrive at any conclusion on the freeness or otherwise of the election. There are other stages that are crucial to an electoral process, as those analyzed hereunder.

III. THE PRE-ELECTION SCENARIO

A. Voter education

Unlike the position regarding the 2000 parliamentary election, the government outlawed the provision of voter education by civil society and made it a preserve of the E.S.C. The E.S.C., however, could delegate its responsibility and supply material to whomever it granted the permission to carry out voter education.⁷⁰

The G.L.A.A. also banned foreign contributions or donations for the purposes of voter education to anyone except the Electoral Supervisory Commission.⁷¹ This restricted the participation of civil society in voter education and deprived voters of their freedom of information. This provision was not as illogical as it might seem considering that the E.S.C. was short on resources.

Since education is power, it is arguable that the government had a reason to want the electorate to remain ignorant in the face of mounting economic problems and what promised to be a stiff election. It is notable, however, that these provisions were largely ignored as the Zimbabwe Election Support Network (Z.E.S.N.) and others continued to distribute pamphlets.⁷² Thus, although the G.L.A.A. had the potential to, and did prejudice voters, the effect was not fatal in terms of voter education.⁷³

B. Voter registration

On January 31, 2002, the nomination day for the presidential election, the E.S.C. announced that 5,479,100 people were registered on the voters roll.⁷⁴ The official government newspaper, *The Herald*, announced that, of those

69. In Lesotho, electoral laws were only changed to facilitate the smooth running of elections in view of the compromises made by the contestants.

70. G.L.A.A., *supra* note 63, at 14D(4), (6).

71. *Id.* § 14D(5).

72. Lesotho Report, *supra* note 60.

73. It may also be noted that the Civic Alliance for Social and Economic (C.A.S.E.P.) and the Legal Projects Centre (L.P.C.) continued to educate people on their rights in spite of the G.L.A.A.

74. The Forum reports that the M.D.C. claimed to have uncovered 524 duplications and 107 deceased voters still registered on the roll.

registered, 3.2 million were urban voters and 2.2 million rural voters.⁷⁵ The government later altered the figure to reflect the presence of 3.2 million rural voters and 2.2 million urban voters. This is significant because the ruling party believed its support base was the rural area.⁷⁶

It is alleged that the office of the Registrar-General declined to publicize the number of voters registered in each constituency on the grounds that the information was confidential.⁷⁷ Furthermore, the R-G is also alleged to have refused to release the final roll used in the election.⁷⁸ This caused disquietude within the opposition as it was argued that the roll could be used to manipulate the outcome of the vote. Some commentators claimed that this anomaly reflected the fact that the roll had not been updated, leaving “a vast reservoir of fictional voters who can then be mobilized at will when the going gets tough.”⁷⁹ This secretiveness was hardly in the spirit of transparency and had the potential to vitiate the fairness of the election, contrary to international expectations.

C. Complaints with regards to registration

The Human Rights Forum observes that the fundamental rights to vote and equality were compromised. It also observed that the effects of the G.L.A.A. and other subsequent laws was to disenfranchise Zimbabwean citizens of foreign descent and those previously entitled to postal votes. Moreover, procedural complexities also resulted in most people being deprived of their right to register, and therefore, their right to vote.

Disenfranchisement occasioned by failure to secure national identification was particularly rampant among women married under customary law and the youth. Chiefs and headmen (under the pay of the ruling party) became a conduit for securing national identity cards (IDs) for the purposes of registration. Tendai Shumba, of Magunje (Hurungwe district) failed to secure a national ID reportedly because she did not take a letter of recommendation from Z.A.N.U. (P.F.) officials.⁸⁰

It is also reported that numerous roadblocks were set up by Z.A.N.U. (P.F.) supporters to dispossess people of their identity cards so that they could not prove their membership to the ruling party. The Forum also reported that, by the time of voting, about 1,300 national identity cards had been reportedly stolen in the districts of Mutoko, Tsholotsho, Nkayi, Bulilimangwe South,

75. See THE HERALD, Mar. 12, 2002, at <http://www.herald.co.zw>. (last visited Oct. 11, 2003).

76. See THE HERALD, Mar. 11, 2002, at <http://www.herald.co.zw>. (last visited Oct. 11, 2003).

77. See THE DAILY NEWS, Mar. 10, 2002, at <http://www.herald.co.zw> (last visited Oct. 11, 2003).

78. See THE HERALD, Mar. 7, 2002, at <http://www.herald.co.zw>. (last visited Oct. 11, 2003).

79. See THE DAILY NEWS, Apr. 2, 2002, at <http://www.herald.co.zw> (last visited Oct. 11, 2003).

80. See THE DAILY NEWS, Mar. 7, 2002, at <http://www.herald.co.zw> (last visited Oct. 11, 2003).

Kwekwe and Buhera North. Such extensive disenfranchisement impacted the freeness and fairness of the election.

Other "stringent" provisions that may have contributed to the disenfranchisement of voters were the proof of residence requirements in the G.L.A.A.⁸¹ Many people in the urban areas (touted to be the opposition M.D.C. stronghold) were either homeless or could not obtain proof of residence. Many expatriates intending to come to Zimbabwe to vote were likewise disenfranchised.⁸² Approximately 22,000 prisoners in jail could not vote either, although there is no legal impediment for those on remand or those serving six months or less. In contrast, all prisoners were allowed to vote at independence in 1980.

Students were also among those to suffer disenfranchisement. Those who had been registered at tertiary institutions found that they could not vote as the Ministry of Higher Education gave instructions that the institutions remain closed during the election. Students attempting to vote at polling stations near their institutions were reportedly turned away.⁸³

In addition, amendments that were introduced to the Citizenship Act⁸⁴ were also used to disenfranchise a majority of the electorate who held dual citizenship. It is reported that the R-G refused to re-instate those who had successfully applied to the courts against these amendments.⁸⁵ There were also allegations of procedural irregularities like registration after the roll had been closed or by the underage.⁸⁶

Although it is difficult, if not impossible, to verify all allegations, surely some of these complaints must have a basis in fact. It would seem that most of them were founded, as the government did little to counter them. Violations, and willful manipulation of the law is difficult to dispute. Such a scenario offends the standards for elections as contemplated in the international instruments adverted to previously.⁸⁷

81. G.L.A.A., *supra* note 63, § 3(e)-(f). It is generally felt that the G.L.A.A. placed "unreasonable" demands on the electorate.

82. See THE ZIMBABWE STANDARD, Mar. 10, 2002, at <http://www.standard.co.zw> (last visited Oct. 11, 2003).

83. See THE DAILY NEWS, Mar. 2, 2002, at <http://www.herald.co.zw> (last visited Oct. 11, 2003) (quoting the Zimbabwe National Students Union (Z.I.N.A.S.U.)).

84. See The Citizenship of Zimbabwe Act, § 4:01 (1990).

85. Lesotho Report, *supra* note 60.

86. See generally, The Zimbabwe Human Rights Forum, at <http://www.hrforumzim.com/special-inhrru/Election> (last visited July 30, 2002).

87. See also Southern African Development Community (S.A.D.C.) Parliamentary Forum, *Norms and Standards for Elections in the SADC region*. (Zimbabwe is a member of S.A.D.C.)

IV. THE ELECTIONS AND FUNDAMENTAL FREEDOMS

A. *The freedoms of expression and information*

The right of freedom of expression is protected in the Constitution.⁸⁸ As was the case in Lesotho's General Elections, the state-controlled media devoted most of their coverage to the ruling party. In Zimbabwe, however, the situation was more serious. To begin with, the media was clearly polarized between the independent press and the state-controlled press.⁸⁹ The former seemed to favor the opposition, although most of them strove for balance. The government controlled media was however glaringly partisan. For example not a single state-controlled newspaper, radio or television ran any advertisement for the opposition when the private press would advertise the ruling party.⁹⁰

Even more repugnant, the state-controlled media often invented stories to paint the opposition in a bad light.⁹¹ In fact, the Zimbabwe Broadcasting Corporation (Z.B.C.) was subsequently accused of not adhering to basic standards of journalism in their support for the ruling party.⁹² The Media Monitoring Project issued a report of the news bulletins carried by the television from December 1, 2002 to March 7, 2002. It observed that ninety-four percent favored Z.A.N.U. (P.F.) while the remainder was negatively slanted against the opposition.⁹³

Unlike the case with Lesotho, incidents of violence against media house and personnel were not uncommon during the Zimbabwean election. Offices and printing houses of *The Daily News* were bombed several times by suspected ruling party supporters. Independent publications were 'banned' from such areas as Bindura, Karoi and Masvingo, all strongholds of the ruling party.⁹⁴ Vendors of these publications were invariably assaulted or tortured.

The law was also used to make it difficult for the media to freely inform the populace. Laws like the Public Order and Security Act (P.O.S.A.),⁹⁵ as well

88. ZIMB. CONST. § 20; see also U.D.H.R., *supra* note 10, at 19; I.C.C.P.R., *supra* note 12, at art. 19.

89. See generally, Media Monitoring Project (2001), in <http://www.kabissa.org/lists/newsletter-submissions-1/0876.html>; R. Saunders, (1999) *A History of the Media in Zimbabwe*.

90. ZIMBABWE HUMAN RIGHTS FORUM, (2002) *Human Rights and Zimbabwe's Presidential Election*: Mar. 2002, at 15.

91. G. Feltoe, *supra* note 21, at 83-84; See also SUNDAY MAIL, Feb. 24, 2002 and Mar. 3, 2002; see also THE HERALD, Feb. 11, 2002.

92. COMMONWEALTH, *supra* note 61.

93. FORUM, *supra* note 3, at 18.

94. See THE DAILY NEWS, Jan. 25, 2002, at <http://www.herald.co.zw> (last visited Oct. 11, 2003).

95. Public Orders & Security Act, ch. 11:17.

as the Access to Information and Protection of Privacy Bill (now an act), were often used to arrest journalists for publishing "false statements, which are peddled internationally."⁹⁶

In summary on this issue, it may be observed that ruling party supporters deliberately violated the rights of media personnel as well as the electorate. Opposition parties were denied coverage in the state-owned media. As if that was not enough, laws were introduced to curtail the right of expression as well as its attendant right to receive information. Where the playing field is not level, elections cannot be said to be genuine, free and fair. Next, we look at the level at which other basic rights were respected during the election.

B. Freedoms of association and assembly

The Constitution protects these two freedoms.⁹⁷ The African Commission in *John D Ouko v Kenya* also held freedom of association sacrosanct.⁹⁸ Likewise, the Commission affirmed freedom of assembly as a fundamental political right in *Sir Dawda K. Jawara v The Gambia*.⁹⁹ However, these freedoms seem to have been trampled upon during the Zimbabwean election.

The introduction of the P.O.S.A. heralded the intensification of a series of violations.¹⁰⁰ Summarized, P.O.S.A. made it illegal to hold political meetings without advance notice and permission of the police. It also prohibited statements likely to cause 'ridicule' to the President. A month after its promulgation, forty-two people had been arrested under the Act. The Forum notes that none of them were ruling party supporters.¹⁰¹

While President Mugabe addressed fifty major rallies, Tsvangirai could only address eight as the police mostly refused to grant permission on the grounds that they feared for public security.¹⁰² In White City Stadium in Bulawayo, the police fired tear gas to disperse M.D.C. supporters after clashes with Z.A.N.U. (P.F.) sympathizers who invaded the stadium.¹⁰³ Subsequently,

96. P. Chinamasa, as recorded in 28 PARL. DEB. (Parliament of Zimbabwe) 39:3547.

97. ZIMB. CONST., ch. § XXI. See also U.D.H.R., *supra* note 10, at art. XX; I.C.C.P.R., *supra* note 12, at arts. XXI, XXII.

98. Communication 232/99, <http://www.achpr.org/html/communications.html>.

99. Communication 149/96, <http://www.achpr.org/html/communications.html>.

100. Public Order & Security Act, *supra* note 95. Violations included freedom of association. See generally, *Report of the South African Parliamentary Observer Mission* 9, Mar. 9-11, 2002, <http://www.gov.za/issues/zimreport.htm>. [hereinafter S.A.P.O.M.]. Although the group held (amid disagreements) that the election was "a credible expression of the will of the people," their observations seem to controvert the conclusion.

101. THE FORUM, *supra* note 3, at 23.

102. *Id.*

103. See THE DAILY NEWS, Feb. 1, 2002, at <http://www.herald.co.zw> (last visited Oct. 11, 2003).

the M.D.C. had to obtain an injunction against the police.¹⁰⁴ There were also reports that police asked for national IDs before allowing people to attend rallies addressed by M.D.C. Those with no cards were allegedly turned away.¹⁰⁵

C. Freedom from violence and intimidation

Political violence impedes the elector's ability to participate freely in the electoral process. The electors can either be deterred from voting or may be unduly influenced in their choice.¹⁰⁶ Violence was the most outstanding occurrence in the Zimbabwean election. In most instances, it appeared to have been incited by the ruling party. The opposition M.D.C. was the principal target, but civil society and churches were not spared. We must, however, mention that the opposition itself was not above perpetrating violence.¹⁰⁷ Nonetheless, the ruling party employed the full weight of the 'war veterans' and state agents in order to win the election.

Political violence on such a scale had never been experienced before the 2000 Constitutional referendum and Parliamentary election.¹⁰⁸ Inflammatory statements from the leadership of the ruling party worsened it. President Mugabe was quoted boasting that his party had several "degrees in violence." He also urged his supporters to wage "a real war" on the M.D.C.¹⁰⁹ "The war is going to be physical," he said.¹¹⁰

Following a request by S.A.D.C., he eventually made an appeal for an end to violence, arguing that it was drawing international attention.¹¹¹ After the European Union (E.U.) and the Commonwealth mounted the pressure, the President made further calls for an end to violence.¹¹² The governor for

104. See THE FINANCIAL GAZETTE, Jan. 27, 2002, at <http://www.mweb.co.zw> (last visited Oct. 11, 2003).

105. See THE DAILY NEWS, Feb. 4, 2002, at <http://www.herald.co.zw> (last visited Oct. 11, 2003).

106. COMMONWEALTH, *supra* note 61, at 7.

107. *Id.*

108. Evidence of the massive violence and intimidation came to light in the cases following the disputed 2000 Parliamentary Elections. See generally *Mutoko South Election Petition*, HH 68/2001, ZIMBABWE REPORT 14, June 20, 2002; *Hurungwe East Election Petition* and *Silas Matamisa v. Phillip Chiyangwa and Registrar General of elections* HH48/2001. See also S. Moyo (2001) 'The rule of law in Zimbabwe' Paper presented to the Canadian Bar Association Annual General Meeting which is on file with the author.

109. See THE FINANCIAL GAZETTE, Jan. 10, 2002, at <http://www.mweb.co.zw> (last visited Oct. 11, 2003).

110. See THE DAILY NEWS, Jan. 6, 2002, at <http://www.herald.co.zw> (last visited Oct. 11, 2003).

111. See THE DAILY NEWS, Jan. 19, 2002, at <http://www.herald.co.zw> (last visited Oct. 11, 2003).

112. See THE DAILY NEWS, Jan. 30, 2002, at <http://www.herald.co.zw> (last visited Oct. 11, 2003).

Manicaland is also reported to have called for a peaceful campaign.¹¹³ These pleas did nothing to stop the tide as party youths trained under the national youth service, known as the "green bombers" for their military-style uniforms, continued to set up roadblocks and terrorize the people.

The "war veterans" and the "green bombers" also set up terror "bases" where victims would be tortured or "re-educated".¹¹⁴ Several deaths and disappearances were reported.¹¹⁵ In the Midlands, an M.D.C. supporter was allegedly beheaded with a spade. Another victim had the letters M.D.C. carved with a knife on his back.¹¹⁶ Gang rapes were not uncommon against suspected opposition supporters.¹¹⁷ In stark contrast, Tsvangirai appealed for reason and resort to the law.¹¹⁸

Tsvangirai's faith in the rule of law was however misplaced, as the Zimbabwe Republic Police (Z.R.P.) was clearly partisan in enforcing the law.¹¹⁹ In fact, it has been said, "[s]ympathizing with the opposition became a sure way of having normal life disrupted by the law enforcement agents."¹²⁰ In Chivi District, police fired live bullets and hurled teargas at Tsvangirai's convoy after he stopped to greet supporters lining the roadside.¹²¹ This was not the first or last time the police harassed him or his supporters.¹²² Today, the M.D.C. president faces two counts of treason, whereas senior Z.A.N.U. (P.F.) officials perpetrate violence and incite mayhem with impunity during elections.

113. See THE ZIMBABWE STANDARD, Jan. 27, 2002, at <http://www.standard.co.zw> (last visited Oct. 11, 2003).

114. See THE ZIMBABWE INDEPENDENT, Mar. 1, 2002, at <http://www.mweb.co.zw> (last visited Oct. 11, 2003).

115. The Forum catalogues a total of 56 reported politically motivated deaths. THE FORUM, *supra* note 3, at 97-100.

116. COMMONWEALTH, *supra* note 61.

117. *Id.* This writer has assisted some of these victims and has also suffered torture at the hands of state agents. Such mindless violence is still continuing at the time of writing.

118. See THE ZIMBABWE INDEPENDENT, Feb. 8, 2002, at <http://www.mweb.co.zw> (last visited Oct. 11, 2003); THE DAILY NEWS, Feb. 11, 2002, at <http://www.herald.co.zw> (last visited Oct. 11, 2003).

119. This has been going on since the Constitutional referendum in which the government's sponsored Draft Constitution was rejected, see for example *The Human Rights Observer* 'Deterioration of the rule of law in Zimbabwe'; Norwegian Election Observation Mission (2002 *Presidential Elections in Zimbabwe 2002, Preliminary Report* Issued on 12 March 2002 p 3 and G. FELTOE, *The Onslaught Against the Rule of Law in Zimbabwe* (2001) (Paper presented to the South African Institute of International Affairs, Johannesburg).

120. ZIMBABWE HUMAN RIGHTS ASSOCIATION, ZIMBABWE PRESIDENTIAL ELECTIONS 2002 REPORT 3 (2002) [hereinafter ZIMRIGHTS].

121. See THE DAILY NEWS, Feb. 23, 2002, at <http://www.herald.co.zw> (last visited Oct. 11, 2003).

122. See THE DAILY NEWS, Feb. 7-8, 2002, at <http://www.herald.co.zw> (last visited Oct. 11, 2003).

V. POLLING AND POST-ELECTION SCENARIO

Although there were incidents of gross human rights abuses in the run-up to the election, it is encouraging that the election days were generally peaceful.¹²³ However, police fired teargas in Kuwadzana, Harare to dispel voters who had become impatient with the slow pace of the election process. A large number of people could not vote in the M.D.C. strongholds of Harare and Chitungwiza as a result of the reduction of polling stations in urban areas. The reduction amounted to about thirty to forty percent.¹²⁴

Even though verification and counting was delayed, the process was conducted smoothly and according to procedure, as was the case in Lesotho. Notwithstanding that, prior irregularities had marred the whole process. For example, it is reported that the uniformed forces' voting was done in the presence of senior officers and was therefore not secret and subject to influence.¹²⁵ "Numerous M.D.C. agents were kidnapped, injured or arrested or had their cars stoned or taken away," making it impossible to supervise the process.¹²⁶

Furthermore, in Kuwadzana, "war veterans" allegedly assaulted and dispersed voters while wielding guns.¹²⁷ It is not surprising, therefore, that the outcome of the election has not been accepted by the main opposition party, which has filed suit. More importantly, the European Union and the United States have imposed targeted sanctions against senior members of the ruling party.

VI. WHAT WENT WRONG?

A. *The electoral system*

In analyzing the Zimbabwean anomaly, it is fitting to make a brief comparison with other countries.¹²⁸ Lesotho 2002 elections and Ghana 2000 elections were remarkable for the peacefulness. In Lesotho, it has been mooted that this was because of the new electoral system that was introduced.¹²⁹

Zimbabwe uses the First Past the Post (F.P.P.) or "winner takes all" electoral arrangement. It cannot be said that the choice of a political model is merely important. Apart from its impact on the "representativeness, legitimacy

123. This writer was an unofficial observer on behalf of the Centre for Human Rights, University of Pretoria.

124. COMMONWEALTH, *supra* note 61, at 16.

125. ZIMRIGHTS, *supra* note 120, at 5.

126. Feltoe, *supra* note 21, at 92.

127. See THE DAILY NEWS, Mar. 11, 2002, at <http://www.herald.co.zw> (last visited Oct. 11, 2003).

128. This writer has observed several elections, including the Lesotho 2002 ones.

129. The Mixed Member Proportional Representation system.

and stability of the government born of it,"¹³⁰ the choice of a model is also important in that it shapes the limitations and expectations of the contestants and steers their conduct with respect to human rights. For example in the F.F.P. system the stakes are high in the sense that the loser loses everything. Knowing this, parties and individuals are liable to use unethical and unlawful means to win the election. Since elections have been held relatively peacefully (in Ghana for instance) using the F.F.P. system, the choice of an electoral model should not be overemphasized. Even in Lesotho, where a new model was introduced, it must not be forgotten that it was used on a limited scale. There are other vital considerations to be taken into account.

B. The lack of transparency in Zimbabwe

Perhaps the most serious cause of violence in Zimbabwe was the lack of openness accompanying the electoral process. For instance, the registration process reopened three times, amid claims by the opposition that there was insufficient publicity of the event.¹³¹ The electoral laws that had been the hallmark of past elections were often changed haphazardly. The courts sometimes struck down some of the laws but nevertheless, the same provisions would be returned in the form of other laws.¹³² In instances such as these, it is likely that both the electorate and the contestants would be driven to unlawful means out of sheer frustration or even to compliment an apparently anarchical process.

The refusal to grant accreditation to both domestic and foreign observers that the Zimbabwean government perceived as unfriendly worsened the situation.¹³³ It also seemed to give credence to the fact that the process was flawed.¹³⁴

Also important is the fact that in Lesotho, the "rules of the game" were clearly defined. The opposition had been included in the negotiations surrounding the post-1998 electoral preparations. This was in sharp contrast to the "ostracization" of the opposition in Zimbabwe. Thus, more because of the "inclusivity" of the development in Lesotho rather than the new electoral system, the election went smoothly.

130. N.L. Mahao, *Electoral System and Legitimacy of Representation*, (2000) 10 LESOTHO L.J. 245 (2002); see also S.N. Ndengwa, *The Relevance of the Electoral System: A simulation of the 1992 Kenyan Election*, 2 AFR. L.J. POL. SCI. 14 (1997).

131. COMMONWEALTH, *supra* note 61.

132. For example the General Laws Amendment Act was struck down by the courts to be returned a barely two weeks later in the form of the Electoral Amendment Bill (number 4 of 2002).

133. The local Zimbabwe Election Support Network (Z.E.S.N.) applied to field 12,500 observers but was only allowed 500. The twenty-three strong delegation of NGOs from South Africa was refused accreditation. The E.U. pulled out after its head of delegation had also been denied observer status.

134. Comparing Lesotho 2002 and Ghana 2000 elections.

C. The advent of a strong opposition in Zimbabwe

It could be contented that the Zimbabwean election was strikingly different because of the recent emergence of a strong official opposition. Unlike in Lesotho, where the major opposition parties had been testing their strengths against one another for a considerable period of time, the ruling party in Zimbabwe had a history of dominance and complacency that made it appear invincible. Although Z.A.N.U. (P.F.) seems to have a history of violence against political opponents,¹³⁵ in 2002 the fear of loss was palpably existent, as evidenced in the overreaction by the ruling party.¹³⁶ This apprehension could only lead to desperate measures that would be an indictment to the whole electoral course.

It should be noted further that unlike Lesotho, Zimbabwe has a very big middle class, a student movement and civil society so strong that consciousness was complementally high. Because of unparalleled economic woes—largely the result of corruption and Economic Structural Adjustment Policies—students, urbanites, and the middle class were the most poignant victims of the economic downturn. This could only increase strife, as demonstrations became a daily phenomenon. Believing it was under a siege of coup like proportions, the ruling party increased strong-arm tactics.

D. The Land Question

Although no African state could be said to be liberated from problems regarding the land issue, in Zimbabwe the clamor took on a serious tone in the run up to the elections for various reasons. The liberation struggle (one of the most bitter in the struggle for the decolonisation of Africa) was principally premised on the land question.

The Lancaster House Constitution, which was negotiated in 1979, made it practically impossible for the new black government to expedite the process of redistribution.¹³⁷ Thus after the government failed to win support to solve the land issue through what many perceived to be an unrepresentative, unjust and discriminatory Constitutional overhaul, it mounted what was dubbed a “racist campaign” against white farmers. They were accused of having sponsored the

135. Africa Watch (1989) *Zimbabwe: A Break With the Past?* The Africa Watch Committee pp 55-76; see generally, ARNOLD, MILLIARD W. ET AL., *Zimbabwe: Report on the 1985 General Elections* (International Human Rights Law Group Zimbabwe 1986); RICHARD SAUNDERS, *NEVER THE SAME AGAIN: ZIMBABWE'S GROWTH TOWARDS DEMOCRACY, 1980-2000*, pp. 20-24.

136. Most statements by senior personnel in the government were astonishingly un-statesmanlike.

137. Jeffrey Herbst, 'The dilemmas of land policy in Zimbabwe' in Simon Baynham (1990) *State Politics in Zimbabwe*: University of Zimbabwe Publications p 131.

rejection of the draft Constitution in cahoots with the M.D.C., who were also called "puppets" of Western influence and "Rhodies."¹³⁸

This gospel of hate found its mark and spawned ruling party militants in the form of "war veterans" and most unemployed youths who were willing to go to extremes to advance the "Third *Chimurenga*." Thus, although other countries have their own land crisis, the demagoguery surrounding the issue in Zimbabwe contributed to violence.¹³⁹

VII. CONCLUSION AND RECOMMENDATIONS

Following from the above, it is our submission that an honest critique will reach the conclusion that the 2002 Presidential election was not genuine, legitimate, free, or fair. While there is little controversy over the genuineness of the elections in Lesotho, the Zimbabwean process violated all the norms and standards, international or regional, expected in an election. It is sad, therefore, that some observers opted to see no evil, hear no evil and speak no evil.¹⁴⁰

In view of this, it is hoped that it is not a misplaced sense of brotherhood or an "old-boy network of African strongmen," (as Philip Gourevitch calls it)¹⁴¹ that makes African leaders stick together in the face of wanton human rights violations. Now is the time to come up with clear, binding and enforceable human rights protection protocols and mechanisms before the continent is relegated to the dustbin of democratic competitiveness.

For the sake of progress and development, the continent should be courageous enough to admit, condemn and rectify its shortfalls. Where praise is due, as in the Lesotho election, it must be generously accorded. By the same token, wherever intervention is necessary, as was arguably the case in Zimbabwe, the international community should not hesitate to intervene. It is mainly because nothing was done then that people continue to die today.

138. Zimbabwe was formerly Rhodesia under colonial rule.

139. South Africa, Kenya and Namibia are some of the countries where the land question has manifested itself recently.

140. These include the Namibian, Kenyan and Tanzanian Government Observer Teams, the C.O.M.E.S.A. Observer Team, the O.A.U. Observer Mission, the African Heads of (Diplomatic) Mission and the S.A.D.C. Ministerial Task Force.

141. PHILIP GOUREVITCH, *WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES: STORIES FROM RWANDA* 254 (Picador USA 1999).